

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

ANGEL RIVERA, )  
Petitioner, )  
 )  
v. )  
 )  
JOHN ASHCROFT, )  
Respondent. )  
 )

FILED  
CLERK OF COURT  
JUL 10 10 A.M. 31  
CIVIL ACTION  
NO. 05-10629-JLT

**RESPONSE TO ORDER TO SHOW CAUSE AS TO  
WHETHER PETITIONER IS "IN CUSTODY" PURSUANT TO 28 U.S.C. §§ 2241 & 2254**

In an order dated May 10, 2005, this Court outlined the governing law regarding the petitioner's failure to demonstrate that he is in custody. See Angel Rivera v. John Ashcroft, No. C.A. 04-12731-JLT (May 10, 2005). There, the Court recited the law as follows:

Section 2254 provides that federal courts "shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court." 28 U.S.C. § 2254(a) (emphasis added). Thus, "[t]he first showing a § 2254 petitioner must make" is that he is "in custody pursuant to the judgment of a State court." Lackawanna County Dist. Atty. v. Coss, 532 U.S. 394, 403-404 (2001) (quoting 28 U.S.C. § 2254). The "in custody" language of the federal habeas statutes, 28 U.S.C. §§ 2241, 2254, is jurisdictional and requires habeas petitioners to be in custody under the conviction or sentence they attack when they file the petition. Maleng v. Cook, 490 U.S. 488, 490-91 (1989) (per curiam); Fernos-Lopez v. Figarella Lopez, 929 F.2d 20, 23 (1st Cir. 1991).

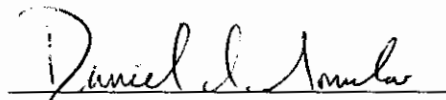
Once a prisoner's sentence expires, he is no longer "in custody" under that conviction sufficient for the court to exercise jurisdiction to hear a habeas petition under § 2254. Lackawanna, 532 U.S. at 403-04. Further, "the collateral consequences of that convictions are not themselves sufficient to render an individual 'in custody.'" Maleng, [4]90 U.S. at 492. It is well-settled that deportation proceedings are collateral, rather than direct, consequences of a criminal conviction. See United States v. Gonzalez, 202 F.3d 20, 25 (1st Cir. 2000); Nunez Cordero v. United States, 533 F.2d 723, 726 (1st Cir. 1976); see also Kandiel v. United States, 964 F.3d 794, 796 (8th Cir. 1992) (collecting cases).[footnote omitted]. Thus, a petitioner detained by the BICE as a result of a conviction whose sentence has already expired is not "in custody" for purposes of filing a § 2254 petition attacking the conviction. Broomes v. Ashcroft, 358 F.3d 1251, 1254 (10th Cir.), cert. denied, 73 U.S.L.W. 3353 (2004); Fordjour v.

Stewart, 2003 WL 22416689 at \*1 (N.D. Ca. Oct. 20, 2003) (Chesney, J.); Cuevas v. New York, 2002 WL 206985 at \*2 (S.D.N.Y. Feb. 11, 2002) (Sweet, J.); Neyor v. I.N.S., 155 F. Supp. 2d 124, 134 (D.N.J. 2001).

Angel Rivera v. John Ashcroft, No. C.A. 04-12731-JLT (May 10, 2005). As the attached documents from the Plymouth County Correctional Facility and the Massachusetts Department of Correction demonstrate, the petitioner completed his state sentence on September 13, 2004, and is currently being detained by the Bureau of Immigration and Customs Enforcement. See Exhibits A, B. Consequently, the petitioner is not "in custody" pursuant to 28 U.S.C. § 2254, and this Court is without jurisdiction to hear his claim.

Respectfully submitted,

THOMAS F. REILLY  
Attorney General

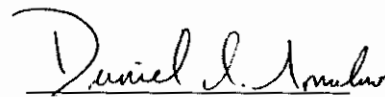


Daniel I. Smulow, BBO # 641668  
Assistant Attorney General  
Criminal Bureau  
One Ashburton Place  
Boston, Massachusetts 02108  
(617) 727-2200, ext. 2949

Date: June 9, 2005

**Certificate of Service**

I hereby certify that a true copy of the above document was served on Angel Rivera, Plymouth County Correctional Facility, 26 Long Pond Road, Plymouth, MA 02360, by first class mail, postage prepaid, on June 9, 2005.

  
Daniel I. Smulow

# **EXHIBIT A**



# Plymouth County Correctional Facility

## Inmate Summary

**RIVERA-MARTINEZ, ANGEL YUANIS**

16 WILMOTT ST  
LAWRENCE, MA  
(978) 689-4745

Detainers Outstanding: **None**  
Class Level: **Pre-Trial**  
Housing: **C3**

Booking # **404172**  
Inmate ID **38506**  
DOB **1964/01/10**  
AGE **41**  
SSN **017-62-3482**

Room: **412** Bed: **1**



### Commitment Info

Next Court Dt: **2005/01/28**  
Committed By: **I.N.S. Boston**  
Commit Date: **2004/09/13**  
Full Time:

### Pre-Arrgn

Disposed To: **I.N.S. Boston**  
Arrested By:  
Arrest Date:  
End of Sntnc:

### Booking Code: **SAFEK**

Bail: **No Bail**  
Eff.:  
PED:

Ref#: **A37155411**

Sentence:

SID:

Alternate ID: **CLASS 3**

FBI:

Ref#

Offense

Offense Type

Statute

Bail

**A37155411**

**IMMIGRATION HOLD**

-

-

**No Bail**

### Personal Info

Sex: **M** Hair: **BRO** Eyes: **BRO** Hgt: **5'9"**

Wgt: **180** Race: **HIS**

Ethnicity: **HIS**

Hair Length: **SHT** Teeth: **NRM** Handed: **R**

Build: **MED** Speech: **LAC**

Language: **SPN**

Skin Ton: **OLV** Marital Sts: **S** Children: **3**

Religion: **CRS**

Education: **HD**

Military: **NSR** Occu: **insurance sales**

POB: **santo domingo**

Citizen: **DOMINICAN REPUBLIC**

Self Reported Physical

**GOOD**

Scars, Marks, Tattoos:

Special Needs:

Warrant Info:

### Family Info

Spouse:

Phone:

Mother: **martinez, elvira**

Phone:

Father: **rivera, nicolas**

**Living**

Phone:

**Living**

Emergency: **rivera-garcia, ingrid**  
**same, same, MA**

Phone: **(978) 686-4745**

**SISTER**



# Plymouth County Correctional Facility

## Inmate Summary

### Supplemental Information

**RIVERA-MARTINEZ, ANGEL YUANIS**  
16 WILMOTT ST  
LAWRENCE, MA

**Booking #:** 404172

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#### Alerts

Notifications:

Risk Types:

Special

Management:

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#### Alias Information

Name: DOB: SSN: Comments:

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#### Enemies

Name: Inmate ID: Comments:

---

#### Detainers

Type: Agency: Status: Expiration:

---

#### Restraining Orders

Type: Plaintiff: Start Date: End Date:

# **EXHIBIT B**

## Inmate Sentence Listing

W62790

RIVERA, ANGEL

Report Date: 2005 0609 09:27:59

Sentence Unit: A

Sent #: 1                      Statute:    1ST    265                      22A                      320  
RAPE OF CHILD UND 16; USE OF FORCE (1ST)

Off. Date:    19951001  
Sent. Type:    State Prison                      PE:    20050528  
Imposed:    19970606                      Min:    20050528  
Invoked:    19970606                      8Y TO 8Y 1D                      Max:    20050529  
Jail Credit:    8                      Gcd:  
Effective:    19970529  
Court:    ESSEX SUP CRT-NEWBURYPORT  
Docket:    96832

Statutory good Time Restrictions.

Sent #: 2                      Statute:    1ST    265                      22A                      320  
RAPE OF CHILD UND 16; USE OF FORCE (1ST)

Off. Date:    19951001  
Sent. Type:    State Prison                      PE:    20050528  
Imposed:    19970606                      Min:    20050528  
Invoked:    19970606                      8Y TO 8Y 1D                      Max:    20050529  
Jail Credit:    8                      Gcd:  
Effective:    19970529  
Court:    ESSEX SUP CRT-NEWBURYPORT  
Docket:    96834

Statutory good Time Restrictions.

Sent #: 3                      Statute:    1ST    265                      13B                      331  
INDECENT A&B ON CHILD UNDER 14 (1ST)

Off. Date:    19900601  
Sent. Type:    State Prison                      PE:    20000128  
Imposed:    19970606                      Min:    20010528  
Invoked:    19970606                      4Y TO 5Y                      Max:    20020528  
Jail Credit:    8                      Gcd:  
Effective:    19970529  
Court:    ESSEX SUP CRT-NEWBURYPORT  
Docket:    96837

Statutory good Time Restrictions.

## Inmate Sentence Listing

W62790

RIVERA, ANGEL

Report Date: 2005 0609 09:27:59

Sentence Unit: A

Sent #: 4 Statute: 1ST 265 13B 331  
 INDECENT A&B ON CHILD UNDER 14 (1ST)

Off. Date: 19951001  
 Sent. Type: State Prison PE: 20010528  
 Imposed: 19970606 Min: 20010528  
 Invoked: 19970606 4Y TO 5Y Max: 20020528  
 Jail Credit: 8 Gcd:  
 Effective: 19970529  
 Court: ESSEX SUP CRT-NEWBURYPORT  
 Docket: 96838

Statutory good Time Restrictions.

Paroled Revoked Returned Escaped Returned

Combined dates as of 20040927 13:44

		Original	Revised	Adjusted
Time on parole:	0			
Dead time (parole):	0	PE Date :	20050528	20040912
Dead time (escape):	0	Minimum :	20050528	20040912
Earned time:	257.50	Maximum :	20050529	20040913
Forfeitures:	.0	GCD Date:		
Restorations:	.0			



Massachusetts Department of Correction - VSTAT - General - W\_ADM\_GVSTAT Report on Thursday  
June 9, 2005 09:30

Select Inmate Commitment Number		Name	Comm #	Status	Unit, Cell, Bed	Sec. Level	Comm	
W62790	ANGEL	RIVERA	W62790	RELEASED	UNASSIGNED	4	19970606	200
Photo Image								